UNITED NATIONS

CERD

International Convention on the Elimination of all Forms of Racial Discrimination

Distr.
GENERAL

CERD/C/60/CO/14
21 May 2002

Original: ENGLISH

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRMINATION
Sixtieth session
4-22 March 2002

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Concluding observations of the Committee on the Elimination of Racial Discrimination*

SWITZERLAND

1. The Committee considered the second and third periodic reports of Switzerland (CERD/C/351/Add.2), which were due on 29 December 1997 and 29 December 1999 respectively, as well as a supplementary report at its 1495th and 1496th meetings (CERD/C/SR.1495 and 1496), held on 4 and 5 March 2002. At its 1520th meeting (CERD/C/SR.1520), held on 21 March 2002, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the detailed report submitted by the State party, the contents of which fully correspond to the Committee's revised reporting guidelines (CERD/C/70/Rev.5). The Committee appreciates the detailed answers to concerns expressed and recommendations made in its previous concluding observations, as well as the additional substantial oral information provided by the delegation in response to the questions asked. The Committee expresses its appreciation for the frank and constructive dialogue with the representatives of the State party.

* Please note that the symbol CERD/C/Session No./CO/... will from now on replace the previous symbol CERD/C/304/Add.:.

B. Positive aspects

3. The Committee welcomes the progress made by the State party since the consideration of its initial report (CERD/C/270/Add.1) in significantly advancing the implementation of the provisions of the Convention. In this context, it welcomes the fact that the New Federal Constitution, which entered into force in January 2000, incorporates the principle that all human beings are equal before the law (art. 8).

4. The Committee notes with satisfaction that a number of recent reforms of cantonal constitutions have included provisions prohibiting discrimination.

5. The Committee also notes that the Convention forms an integral part of the Swiss legal system, that some of its provisions may be directly invoked before the courts and that the Federal Court has referred to the provisions of the Convention on several occasions.

6. The Committee welcomes the information provided by the State party on the number of cases dealt with by the courts under article 261 bis of the Penal Code, which penalizes public incitement to racial hatred and discrimination and the spreading of racist ideas.

7. The Committee expresses satisfaction at the establishment of a fund of 15 million Swiss francs aimed at financing projects to combat racism, which include the creation of a nationwide network of advisory centres for victims of racial discrimination. It further welcomes the creation of a Service to Combat Racism aimed, inter alia, at coordinating measures to combat racism, anti-Semitism, xenophobia and extremism within the federal administration and the cantons.

C. Concerns and recommendations

8. The Committee wishes to emphasize that despite the federal structure of the State party, which may render more difficult the full application of the State party's obligations under the Convention in all parts of its territory, the Federal Government has the responsibility of ensuring the implementation of the Convention on its entire territory and must ensure that cantonal authorities are aware of the rights set out in the Convention and take the necessary measures in order to respect them.

9. The persistence of hostile attitudes towards black people, Muslims and asylum-seekers in Switzerland is of utmost concern to the Committee. The Committee recommends that the State party continue its efforts to prevent and combat such attitudes, including through information campaigns and education of the general public. Further, in the light of its general recommendation XIX, the Committee encourages the State party to continue monitoring all tendencies which may give rise to racial or ethnic segregation and endeavour to combat the negative consequences of such tendencies.

10. The Committee is concerned at expressions of xenophobic and racist attitudes in naturalization procedures, particularly those subject to popular vote. It is also concerned that according to legislation still in force decisions taken in accordance with such procedures are not subject to legal review. The Committee is of the view that the right to appeal against decisions, in particular arbitrary or discriminatory ones, in matters relating to naturalization has to be made

an integral part of the policy on naturalization, currently in the process of being amended. Further, the State party should endeavour to avoid statelessness, particularly of children, on its territory, bearing in mind article 38 (3) of the new Federal Constitution, which stipulates that the Confederation "shall facilitate the naturalization of stateless children".

11. While welcoming the position of the Federal Council according to which segregated schooling would be contrary to the Federal Constitution, the Convention on the Rights of the Child and the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee expresses concern about recent moves towards the establishment of separate classes for foreign pupils in some cantons. It is the view of the Committee that segregated schooling may only in exceptional circumstances be considered as being in conformity with article 2 in conjunction with article 5 (e) (v) of the Convention.

12. Allegations of police abuse and excessive use of force against persons of foreign origin during arrest or in the course of deportations are also of concern. The Committee notes that many cantons do not have independent mechanisms for investigation of complaints regarding violence and abuse by the police, and that sanctions against responsible officers have been rare. The State party should ensure that independent bodies with authority to investigate complaints against police officers are established in all cantons. Efforts should also be made to recruit members of minority groups into the police and to provide sensitization and training of police officers on issues of racial discrimination.

13. While commending the important work undertaken by the Federal Commission against Racism, the Committee notes that the Commission has limited powers of action. The State party is invited to strengthen the powers and means of the Federal Commission against Racism. The present exercise to consider setting up a national human rights institution should take note of the criteria for setting up such institutions established by the General Assembly in its resolution 48/134 (the Paris Principles).

14. Noting that the former "three-circle" immigration policy of Switzerland which classified foreigners according to categories of national origin and capacity for integration was abandoned and replaced by a binary admissions system and in view of the dialogue held with the Swiss delegation in this respect, the Committee invites the State party to consider if the reservation to article 2 (1) (a) of the Convention is still necessary or may be withdrawn.

15. The Committee is also concerned about the situation of Travellers, including Roma and Jenish, in Switzerland and hopes that efforts will continue to be made to improve their living and working conditions.

16. The Committee requests information about the legislation in force prohibiting racial discrimination within the private sector in fields such as employment, housing, education, health and access to public places.

17. The Committee takes note of the proceedings under way at the level of the executive organs with a view to formulating the optional declaration provided for in article 14 of the Convention and encourages the State party to complete these proceedings.

18. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on action plans or other measures they have taken to implement the Durban Declaration and Programme of Action at national level.

19. The Committee recommends that the State party submit its fourth periodic report jointly with its fifth periodic report, due on 29 December 2003, that it be an updating one and that it addresses all points raised in the present observations.